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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 464

BUFORD JAMES, et al.; SOUTHERN DAIRIES, et al.,
Appellants

v.

A. W. TODD, as Commissioner of Agriculture and Industries of the State of Alabama,
Appellee

On Appeal from the Supreme Court of Alabama.

MOTION OF APPELLEE TO DISMISS APPEAL

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MOTION

Appellee, pursuant to Rule 16 (b) of the revised rules of this Court, moves that this appeal be dismissed on the ground that said appeal does not present a substantial Federal question of sufficient importance and substance to warrant further consideration and argument of this case.

STATEMENT

This is an appeal from a final decision of the Supreme Court of Alabama, rendered August 22, 1957 (rehearing denied June 5, 1958) affirming a decree of the Circuit Court of Montgomery County, Alabama, In Equity, upholding the constitutionality of Act No.

570, General and Local Acts of the Legislature of Alabama of 1955, page 1239, (Code of Alabama of 1940, Title 22, Section 231 [6-13]—pocket part). The decision of the Supreme Court of Alabama is styled as **Buford James, et al., v. A. W. Todd, as Commissioner,** etc., and reported in . . . Ala. . . ., 103 So. 2d 19-29. Appellants have appealed pursuant to Title 28, U.S.C. Section 1257 (2).

It is the position of Appellee that the issues involved as disclosed by Appellants' Jurisdictional Statement are so unsubstantial and lacking in importance as not to warrant further consideration or argument of this case and that, therefore, this appeal should be dismissed.

ARGUMENT

I

Act. No. 570 of the Legislature of Alabama of 1955 is a valid and constitutional legislative enactment as its purpose is to more effectively utilize existing agencies or departments of the State of Alabama in regulating production, processing and distribution of milk to the end that its inhabitants will be supplied with a wholesome and healthful supply of milk and milk products. The purpose of the Act is expressly declared in Section 1, thereof. The Act is a health measure for the protection of the people of Alabama. The Court below in upholding the validity of the Act viewed it as a health measure and recognized the authority of the State of Alabama under its police power to enact such a law. Authorities cited in the decision of the Court below amply support this position.

II

Act No. 570 of the Legislature of Alabama of 1955 regulates milk coming into Alabama from other states but the regulation prescribed in the Act does not violate the Constitution of the United States as offending the commerce clause thereof as any effect that its requirements may have upon interstate commerce is only incidental or indirect and not an unconstitutional burden thereon. The decision of the Court below recognizes and follows decisions of the United States Supreme Court to this effect.

III

Act No. 570 is valid and constitutional upon its face and consideration thereof should be confined to its terms as enforcement of the Act had not actually begun prior to the beginning of this litigation. The Act is not an economic trade barrier unnecessarily burdening or discriminating against the shipment of milk into the State of Alabama as the Act is primarily a health measure to provide the inhabitants of Alabama with a healthful supply of milk because of the large volume of milk transported into Alabama from other states. The Act does not prevent or prohibit the shipment of milk into Alabama, as anyone may transport any quantity of milk into Alabama so long as such milk meets the health and sanitary standards required for milk produced in the State of Alabama which is not an unreasonable burden upon an importer of milk. The Act readily discloses that it sets forth very reasonable requirements for the importation of milk into Alabama as it amounts to no more than providing additional inspectors for milk coming into Alabama to determine whether such milk meets Alabama require-

ments, which is not an unconstitutional discrimination against such milk.

IV

The decision of the Court below upholding Act No. 570 is consistent with prior decisions of this Court and the cases cited by Appellants in their Jurisdictional Statement are not applicable for the reason that such cases involve requirements declared to be unconstitutional by this Court where conditions prescribed by such requirements made it impossible or near impossible to import the products involved, or an obvious unreasonable or discriminatory burden was placed upon the products to be imported. Act No. 570 is readily distinguishable from such cited cases for the reason that said Act provides reasonable requirements for the importation of milk into Alabama. Applicable cases on the subject of the State regulating imported food products from another State disclose that this Court has followed, more or less uniformly, the rule that there is "broad power in the State to protect its inhabitants against perils to health or safety, . . ., even by the use of measures which bear adversely upon interstate commerce," but, . . ., a State may not "promote its own economic advantages by **curtailment** or **burdening** of interstate commerce." An economic objective, as distinguished from any health, safety and welfare purpose has been rejected. **Hood v. DuMond,** 336 U.S. 525, 93 L. Ed. 865. This rule has been followed in determining whether statutes of the type in question are violative of the Constitution of the United States and the cases cited by Appellants in their Jurisdictional Statement are cases where the state or locality attempted by statute or ordinance to "promote its own economic advantage by curtailment or burdening of

interstate commerce" whereas Act No. 570 is clearly and unmistakably an effort by the State to protect "its inhabitants against perils to health and safety" by regulating the shipment or transportation of milk into the State "to the end that its inhabitants will be supplied with a wholesome and healthful supply of milk." The foregoing rule of law as enunciated in the **Hood** case is so well settled and uniformly followed by this Court, and Act No. 570 is so unquestionably a health measure within the power of the State to enact, that the question presented by this appeal has heretofore been decided by the Court thus rendering such question so unsubstantial as not to warrant a review of this case.

V

Although one who desires to transport milk into Alabama from another state must, under the requirements of Act No. 570, obtain a permit from the Commissioner of Agriculture and Industries which is not required for milk produced in Alabama, we contend that this additional requirement does not constitute an unreasonable discrimination against the importer of milk, as additional safe-guards may be established for out-of-state milk so long as such safe-guards are reasonable and not discriminatory. The Legislature can provide reasonable classifications for the inspection of milk to insure a wholesome supply, and so long as **equal** treatment is accorded to those in the same classification no violation of the Constitution occurs. Act No. 570 establishes a reasonable classification as, obviously, inspecting and determining the wholesomeness and cleanliness of imported milk coming from distant sources is for many reasons in a different category or classification than milk produced locally. The

additional requirements of Act No. 570 are procedural only as the substance of the requirements for importing milk into Alabama is the same which is required for milk produced locally, i.e., such milk must be "produced and handled under sanitary conditions no less adequate in protection of public health than milk produced in the State of Alabama." To produce and handle milk under sanitary conditions no less adequate in the protection of public health than milk produced in Alabama can mean only that the milk must be produced under conditions and standards not lower than those prescribed for Alabama milk which is tantamount to saying that such standards must, at least, **equal** those prescribed for Alabama milk. The system established by Act No. 570 is reasonable and it was within legislative competence for the Legislature of Alabama to establish a separate classification for imported milk and such classification as here established is not violative of the equal protection clause of the 14th Amendment to the Constitution of the United States nor violative of any other constitutional guarantee. **Metropolitan Casualty Insurance Company v. Brownell,** 79 L. Ed. 1070, 294 U. S. 580. **16 C. J. S., Constitutional Law,** Section 100 C, page 458-464.

VI

The reasons set forth by Appellants on pages 6 and 7 of its Jurisdictional Statement wherein they contend that Act No. 570 is violative of the Constitution of the United States which contentions are numbered as I through XIII are all without merit. Act No. 570 does not place an unreasonable or discriminatory burden upon milk transported into Alabama as charged in Nos. I, II and V for the reasons hereinabove stated nor does such Act authorize the adoption of regula-

tions which are more stringent than Health Department regulations as contended in No. III because regulations adopted thereunder cannot exceed the requirements for milk produced in Alabama. No. IV is without merit because the Act clearly authorizes the transportation of milk into Alabama where such milk complies with production and distribution standards for milk produced in Alabama. No. VI is without merit as Appellants, under their contention, place a strained construction or interpretation upon the Act. Nos. VII, VIII, IX, X, XI, XII and XIII under Appellants' contention call for a construction and interpretation of the provisions of the Act or such contentions compare the Act with regulations of the Health Department presently in effect. Such contentions are patently without merit.

WHEREFORE, in view of the foregoing, Appellee respectfully contends that this appeal should be dismissed as no substantial constitutional questions are presented as all of such questions presented by Appellants in its Jurisdictional Statement have heretofore been decided by this Court and the decision of the Court below follows such decisions.

Respectfully submitted,

JOHN PATTERSON, Attorney General of Alabama

GORDON MADISON, Assistant Attorney General

GEORGE O. MILLER, JR., Assistant Attorney General

Attorneys for Appellee.

PROOF OF SERVICE

I, John Patterson, Attorney General of Alabama, one of the attorneys for Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 12th day of November, 1958, I served a copy of the foregoing Motion to Dismiss on the Appellants herein by mailing a copy thereof to Frank M. Dixon, Esq., 811 Comer Building, Birmingham, Alabama, and to Sol E. Brinsfield, Jr., Esq., First National Bank Building, Montgomery, Alabama, Attorneys for Appellants, such copy being enclosed in a duly addressed envelope, with first-class postage prepaid; and, I further certify that on the same date I served a copy of the foregoing Motion to Dismiss on the Intervenor-Appellant, State of Mississippi, by mailing a copy thereof to Joe T. Patterson, Esq., Attorney General of the State of Mississippi, State Capitol, Jackson, Mississippi, who is attorney for such Intervenor-Appellant, such copy being enclosed in a duly addressed envelope, with first-class postage prepaid.

John Patterson

JOHN PATTERSON, Attorney General of
Alabama, State Capitol,
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Attorney for Appellee.